

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

YVETTE JOY LIEBESMAN, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 4:14-cv-01653-RLW
)	
COMPETITOR GROUP, INC.,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AS TO COUNT I

COMES NOW Defendant Competitor Group, Inc., (“Defendant”), by and through its undersigned attorneys, and pursuant to Federal Rule 56, moves for summary judgment on Count I of the Complaint of Plaintiff Yvette Joy Liebesman (“Plaintiff”).

1. When a Fair Labor Standards Act (“FLSA”) action is brought as a collective on behalf of others, every plaintiff, even those who are named in the Complaint, must file a separate written consent before the action is “commenced” for purposes of the FLSA’s statute of limitations. *Acosta v. Tyson Foods, Inc.*, 800 F.3d 468 (8th Cir. 2015); 29 U.S.C.A. § 256; 29 C.F.R. § 790.21(b).

2. There is no dispute that Plaintiff has brought the FLSA claim in this action as a collective.

3. There is no dispute that Plaintiff’s claims for unpaid minimum wages and/or overtime under the FLSA accrued on or before November 15, 2012.

4. There is no dispute that Plaintiff has not filed a consent form to join this action.

5. The FLSA has a maximum statute of limitations of three (3) years. 29 U.S.C. § 255(a).

6. For the reasons set forth above, Count I of the Plaintiff's current Complaint is barred by the FLSA's statute of limitations because Plaintiff did not commence this action within three years by filing a consent form with this Court. *See Acosta*, 800 F.3d 468.

7. Because Count I of the current Complaint is now untimely with respect to Plaintiff, the Court should deny Plaintiff's pending "Motion for Conditional Certification and for Court-Authorized Notice Pursuant to § 216(b)."

WHEREFORE, based on the foregoing and the contemporaneously filed Memorandum in Support and Statement of Undisputed Material Facts, Defendant respectfully requests this Court to enter judgment in their favor on Count I of the Complaint, to deny Plaintiff's pending Motion, and for such additional relief as the Court deems just and proper.

Respectfully submitted,

MCMAHON BERGER, P.C.

/s/ Thomas O. McCarthy

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 19th day of November, 2015, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Thomas O. McCarthy_____